SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000692-001 DT 03/08/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

JEAN LYNN BANDES

JEAN LYNN BANDES
6134 N 183RD AVE
WADDELL AZ 85355

v.

ARIZONA STATE DEPARTMENT OF TRANSPORTATION (001)

JOHN C DUTTON

OFFICE OF ADMINISTRATIVE HEARINGS

MINUTE ENTRY

This Court has jurisdiction of this administrative appeal pursuant to the Administrative Review Act, A.R.S. §§12-901 et seq.

This matter has been under advisement and I have considered and reviewed the record of the proceedings from the Arizona Department of Transportation, Motor Vehicle Division, exhibits made of record and the memoranda submitted. The Plaintiff, Jean Lynn Bandes, appeals from the decision of the Motor Vehicle Division to administratively suspend her driver's license for failure to comply with A.R.S. §§ 28-1382(D)(5) and 28-3319(D)(2).

On February 23, 2003, Plaintiff was convicted of violating A.R.S. §28-1382 (Extreme DUI). A.R.S. §28-1382(D)(5) states:

> **D.** A person who is convicted of a violation of this section:
>
> > 5. Shall be required by the department, on receipt of the report of conviction, to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to § 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the conclusion of the

> license suspension or revocation or on the date of conviction, whichever occurs later. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter. [emphasis added]

Plaintiff contends that she never received the order from the court instructing her to equip her vehicle with a certified ignition interlock device, as required by A.R.S. §28-3318. A.R.S. §28-3318(C) states:

> The department shall send the notice by mail to the address provided to the department on the licensee's application or provided to the department pursuant to § 28-448. If an address has not been provided to the department as provided in this subsection, the department shall send the notice to any address known to the department, including the address listed on a traffic citation received by the department.

On June 5, 2003, Defendant issued an order suspending Plaintiff's driver's license for twelve months, as required by A.R.S. §28-1463(A). Plaintiff made a timely request for a hearing, which stayed the suspension pending a decision by the Arizona Department of Transportation Executive Hearing Office. On July 16, 2003, an administrative law judge sustained the order of suspension. Plaintiff now brings the matter before this court.

The sole issue before this court is whether the Arizona Department of Transportation – Motor Vehicle Division, sent notice by mail toPlaintiff. This issue directly concerns the sufficiency of the evidence of the notice to the Plaintiff offered at the administrative hearing. When reviewing the sufficiency of the evidence, a reviewing court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[1] All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the appellant.[2] If conflicts in evidence exist, the reviewing court must resolve such conflicts in favor of sustaining the judgment and against the appellant.[3] A reviewing court shall afford great weight to the administrative law judge's assessment of witnesses' credibility and should not reverse the administrative law judge's weighing of evidence absent clear error.[4] When the sufficiency of evidence to support a judgment is questioned on

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[1] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

[2] *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

[3] *Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

[4] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

appeal, a reviewing court will examine the record only to determine whether substantial evidence exists to support the action of the administrative agency.[5] The Arizona Supreme Court has explained in *State v. Tison*[6] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[7]

It is clear from the record that Defendant mailed Plaintiff a certified Ignition Interlock Order on March 4, 2003. In *State v. Church*,[8] the court held that:

> Once the state proves mailing of the notice of suspension, the state no longer has the burden to prove receipt of the notice or actual knowledge of its contents. The burden then shifts to the defendant to show that he did not receive the notice…[w]e believe that it is more likely than not that a mailed notice will be delivered by the U.S. Postal Service. [emphasis added]

The Plaintiff failed to meet her burden of proving that she did not receive the notice. I find substantial evidence supporting the decision of the administrative agency.

IT IS THEREFORE ORDERED affirming the findings and suspension order of the Arizona Department of Transportation – Motor Vehicle Division.

IT IS FURTHER ORDERED denying the relief requested by the Plaintiff in this case.

IT IS FURTHER ORDERED terminating the stay order previously issued in this case.

IT IS FURTHER ORDERED that counsel for the Defendant shall lodge an order consistent with this minute entry opinion no later than April 20, 2004.

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[5] *Hutcherson v. City of Phoenix,* 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).
[6] Supra.
[7] *Tison*, at 553, 633 P.2d at 362.
[8] 175 Ariz. 104, 108, 854 P.2d 137, 141 (App. 1993); See also *State v. Jennings*, 150 Ariz. 90, 94, 722 P.2d 258, 262 (1986).